

REFERENCE TITLE: contractors; exemptions from licensure; polycrafters

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2338

Introduced by
Representative McClure

AN ACT

AMENDING SECTIONS 32-1121, 32-1123 AND 32-1158, ARIZONA REVISED STATUTES;
RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 32-1121, Arizona Revised Statutes, is amended to
3 read:

4 32-1121. Persons not required to be licensed: penalties

5 A. This chapter shall not be construed to apply to:

6 1. An authorized representative of the United States government, this
7 state or any county, incorporated city or town, reclamation district,
8 irrigation district or other municipality or political subdivision of this
9 state.

10 2. Trustees of an express trust that is not formed for the purpose of
11 conducting business as a contractor or officers of a court, if they are
12 acting within the terms of their trust or office.

13 3. Public utilities operating under regulation of the corporation
14 commission or construction, repair or operation incidental to discovering or
15 producing petroleum or gas, or the drilling, testing, abandoning or other
16 operation of a petroleum or gas well, if performed by an owner or lessee.

17 4. Any materialman, manufacturer, ~~or~~ retailer, OR POLYCRAFTER WHO IS A
18 MEMBER OF A POLYCRAFTER ASSOCIATION THAT IS CERTIFIED BY THE REGISTRAR IN A
19 MANNER THAT IS DETERMINED BY THE REGISTRAR, WHO IS furnishing finished
20 products, materials or articles of merchandise who does not install or attach
21 such items or installs or attaches such items if the total value of the sales
22 contract or transaction involving such items and the cost of the installation
23 or attachment of such items to a structure does not exceed ~~seven~~ ONE THOUSAND
24 FIVE hundred ~~fifty~~ dollars, AS ADJUSTED ANNUALLY BY THE CONSUMER PRICE INDEX,
25 UNITED STATES AVERAGE, including labor, materials and all other items. The
26 materialman, manufacturer or retailer shall inform the purchaser that the
27 installation may also be performed by a licensed contractor AFFILIATED WITH A
28 POLYCRAFTER ASSOCIATION OR OTHER LICENSED CONTRACTOR whose name and address
29 the purchaser may request.

30 5. Owners of property who improve such property or who build or
31 improve structures or appurtenances on such property and who do the work
32 themselves, with their own employees or with duly licensed contractors, if
33 the structure, group of structures or appurtenances, including the
34 improvements thereto, are intended for occupancy solely by the owner and are
35 not intended for occupancy by members of the public as the owner's employees
36 or business visitors and the structures or appurtenances are not intended for
37 sale or for rent. In all actions brought under this chapter, proof of the
38 sale or rent or the offering for sale or rent of any such structure by the
39 owner-builder within one year after completion or issuance of a certificate
40 of occupancy is *prima facie* evidence that such project was undertaken for the
41 purpose of sale or rent. ~~As used in~~ FOR THE PURPOSES OF this paragraph,
42 "sale" or "rent" includes any arrangement by which the owner receives
43 compensation in money, provisions, chattels or labor from the occupancy or
44 the transfer of the property or the structures on the property.

1 6. Owners of property who are acting as developers and who build
2 structures or appurtenances to structures on their property for the purpose
3 of sale or rent and who contract for such a project with a general contractor
4 licensed pursuant to this chapter and owners of property who are acting as
5 developers, who improve structures or appurtenances to structures on their
6 property for the purpose of sale or rent and who contract for such a project
7 with a general contractor or specialty contractors licensed pursuant to this
8 chapter. To qualify for the exemption under this paragraph, the licensed
9 contractors' names and license numbers shall be included in all sales
10 documents.

11 7. Architects or engineers who are engaging in their professional
12 practice as defined in chapter 1 of this title and who hire or offer to hire
13 the services of a contractor for preconstruction activities relating to
14 investigation and discovery including:

- 15 (a) Subsurface utility location and designation services.
- 16 (b) Potholing.
- 17 (c) Drilling for any of the following:
 - 18 (i) Soil samples.
 - 19 (ii) Rock samples.
 - 20 (iii) Pavement samples.

21 (d) Locating existing features of a building or structure including
22 existing electrical, mechanical, plumbing and structural members.

23 8. A person licensed, certified or registered pursuant to chapter 22
24 of this title or a person working under the direct supervision of a person
25 certified or qualified pursuant to chapter 22 of this title to the extent the
26 person is engaged in structural pest control.

27 9. The sale or installation of finished products, materials or
28 articles of merchandise which are not fabricated into and do not become a
29 permanent fixed part of the structure. This exemption does not apply if a
30 local building permit is required, if the total price of the finished
31 product, material or article of merchandise including labor is more than
32 ~~seven ONE THOUSAND FIVE~~ hundred ~~fifty~~ dollars, AS ADJUSTED ANNUALLY BY THE
33 CONSUMER PRICE INDEX, UNITED STATES AVERAGE, or if the removal of the
34 finished product, material or article of merchandise causes damage to the
35 structure or renders the structure unfit for its intended use.

36 10. Employees of the owners of condominiums, townhouses, cooperative
37 units or apartment complexes of four units or less or the owners' management
38 agent or employees of the management agent repairing or maintaining
39 structures owned by them.

40 11. Any person who engages in the activities regulated by this chapter,
41 as an employee of an exempt property owner or as an employee with wages as
42 the person's sole compensation.

43 12. A surety company or companies which are authorized to transact
44 business in this state and which undertake to complete a contract on which

1 they issued a performance or completion bond, provided all construction work
2 is performed by duly licensed contractors.

3 13. Insurance companies which are authorized to transact business in
4 this state and which undertake to perform repairs resulting from casualty
5 losses pursuant to the provisions of a policy, provided all construction work
6 is performed by duly licensed contractors.

7 14. Any person other than a licensed contractor engaging in any work or
8 operation on one undertaking or project by one or more contracts, for which
9 the aggregate contract price, including labor, materials and all other items,
10 is less than ~~seven~~ ONE THOUSAND FIVE hundred ~~fifty~~ dollars, AS ADJUSTED
11 ANNUALLY BY THE CONSUMER PRICE INDEX, UNITED STATES AVERAGE. The work or
12 operations which are exempt under this paragraph shall be of a casual or
13 minor nature. This exemption does not apply:

14 (a) In any case in which the performance of the work requires a local
15 building permit UNLESS THE PERSON IS A MEMBER OF A POLYCRAFTER ASSOCIATION
16 THAT IS CERTIFIED BY THE REGISTRAR AND THE ASSOCIATION OBTAINS THE BUILDING
17 PERMIT.

18 (b) In any case NOT UNDERTAKEN UNDER A POLYCRAFTER ASSOCIATION THAT IS
19 CERTIFIED BY THE REGISTRAR in which the work or construction is only a part
20 of a larger or major operation, whether undertaken by the same or a different
21 contractor, or in which a division of the operation is made in contracts of
22 amounts less than ~~seven~~ ONE THOUSAND FIVE hundred ~~fifty~~ dollars, AS ADJUSTED
23 ANNUALLY BY THE CONSUMER PRICE INDEX, UNITED STATES AVERAGE, for the purpose
24 of evasion of this chapter or otherwise.

25 (c) To a person who utilizes any form of advertising to the public in
26 which the person's:

27 (i) Unlicensed status is not disclosed by including the words "not a
28 licensed contractor" in the advertisement.

29 (ii) IDENTIFICATION BY ASSOCIATION NAME OR LOGO IS NOT DISCLOSED IN
30 THE ADVERTISEMENT IF THE PERSON IS A MEMBER OF A POLYCRAFTER ASSOCIATION THAT
31 IS CERTIFIED BY THE REGISTRAR.

32 15. A person who is licensed, certified or registered pursuant to
33 title 41, chapter 16 and who is not otherwise required to be licensed under
34 this chapter or an employee of such person.

35 16. A person who functions as a gardener by performing lawn, garden,
36 shrub and tree maintenance.

37 B. A person who is licensed to perform work in a particular trade
38 pursuant to this chapter shall not be required to obtain and maintain a
39 separate license for mechanical or structural service work performed within
40 the scope of such trade by such person.

41 C. Any person who does not have an exemption from licensure pursuant
42 to subsection A, paragraph 14, subdivision (c) of this section is subject to
43 prosecution for a violation of section 44-1522. The attorney general may
44 investigate the act or practice and take appropriate action pursuant to title
45 44, chapter 10, article 7.

1 Sec. 2. Section 32-1123, Arizona Revised Statutes, is amended to read:
2 32-1123. Unlicensed contractors: contract bidding: license
3 denial: exemptions: warning

4 A. Except as provided in subsection D of this section, if an entity
5 that is not licensed pursuant to this chapter bids on a contract for a
6 project with an aggregate worth of more than ~~seven~~ ONE THOUSAND FIVE hundred
7 ~~fifty~~ dollars, AS ADJUSTED ANNUALLY BY THE CONSUMER PRICE INDEX, UNITED
8 STATES AVERAGE, the registrar shall not issue the entity a license pursuant
9 to this chapter for one year after the date of the bid.

10 B. This section does not apply to an entity that bids on a contract
11 for either of the following:

12 1. A department of transportation project.

13 2. A project that is subject to the federal acquisition regulation,
14 title 48 Code of Federal Regulations, including the department of defense
15 federal acquisition regulation.

16 C. This section does not affect the licensing exemptions prescribed in
17 section 32-1121.

18 D. If an entity bids on a contract for a project pursuant to
19 subsection A of this section and the project has an aggregate worth of more
20 than ~~seven~~ ONE THOUSAND FIVE hundred ~~fifty~~ dollars, AS ADJUSTED ANNUALLY BY
21 THE CONSUMER PRICE INDEX, UNITED STATES AVERAGE, and less than twenty
22 thousand dollars, the registrar shall issue the entity a written warning
23 relating to the unlicensed activity if the registrar has not previously
24 issued the entity a warning.

25 Sec. 3. Section 32-1158, Arizona Revised Statutes, is amended to read:
26 32-1158. Minimum elements of a contract

27 A. ~~From and after December 31, 1992,~~ Any contract in an amount of more
28 than ~~seven~~ ONE THOUSAND FIVE hundred ~~fifty~~ dollars, AS ADJUSTED ANNUALLY BY
29 THE CONSUMER PRICE INDEX, UNITED STATES AVERAGE, and less than one hundred
30 fifty thousand dollars entered into between a contractor and the owner of a
31 property to be improved shall contain in writing at least the following
32 information:

33 1. The name of the contractor and the contractor's business address
34 and license number.

35 2. The name and mailing address of the owner and the jobsite address
36 or legal description.

37 3. The date the parties entered into the contract.

38 4. The estimated date of completion of all work to be performed under
39 the contract.

40 5. A description of the work to be performed under the contract.

41 6. The total dollar amount to be paid to the contractor by the owner
42 for all work to be performed under the contract, including all applicable
43 taxes.

44 7. The dollar amount of any advance deposit paid or scheduled to be
45 paid to the contractor by the owner.

1 8. The dollar amount of any progress payment and the stage of
2 construction at which the contractor will be entitled to collect progress
3 payments during the course of construction under the contract.

4 B. At the time of signing a contract the owner shall be provided a
5 legible copy of all documents signed and a written and signed receipt for and
6 in the true amount of any cash paid to the contractor by the owner.

7 C. The requirements of this section shall not constitute prerequisites
8 to the formation or enforcement of a contract. Failure to comply with the
9 requirements of this section shall not constitute a defense by either party
10 to an action for compensation, damages, breach, enforcement or other cause of
11 action based on the contract.